

REMARKS/ARGUMENTS

Applicant hereby responds to the Office Action mailed April 6, 2006.

In the Office Action, the Examiner rejected claims 1 – 5, 7 – 10, 12 – 14, and 16, taking the position that the claims were unpatentable over Friedman (US 2002/0029404) in view of Park (US 6,446,266) and Goldsmith (US D93,212). Applicant respectfully traverses the Examiner's rejection and submits that the cited references were not considered as a whole and do not contain any suggestion or motivation, either in the references themselves, in the nature of the problem to be solved, or in the knowledge generally available to one of ordinary skill in the art, to combine the reference teachings to result in the claimed invention, particularly as amended by this Response. Even so, in response to the Office Action Applicant hereby amends claims 1, 8, and 13 to further clarify the claimed invention. Each of those claims is amended to specify that the elastomeric section permits the cap to snugly engage a wearer's head and that the first ribbon and the second ribbon permit the wearer to decorate or gather the wearer's hair.

The Applicant respectfully submits that the Examiner appears to have utilized the claimed invention's simplicity to arrive at the §103(a) rejection of the claims. However, "[i]n making the assessment of differences, section 103 specifically requires consideration of the claimed invention 'as a whole.' Inventions typically are new combinations of existing principles or features. The 'as a whole' instruction in title 35 prevents evaluation of the invention part by part." Ruiz v. A.B. Chance Co., 357 F.3d

1270, 1275 (Fed. Cir. 2004) (citations omitted). Thus, the “as a whole” requirement prevents “using the invention as a roadmap to find its prior art components.” *Id.*

In the Office Action, the Examiner pointed to individual features of the claimed invention in the prior art. The Examiner did not show, however, that the combination of the disclosures, taken as a whole, suggests the claimed invention. Even if the general concepts of a sweatband having an elastomeric section and a first and second ribbon are known, the claimed combination of a cap having a body, a sweatband, a visor, and a first and second ribbon, as described in each independent claim, particularly as amended, is not known, motivated, or suggested until the present invention. For example, the Examiner has not shown that a person of ordinary skill in the art would have thought to combine a sweatband including an elastomeric section and a first and second ribbon. As described in the Specification, this combination provides the advantage, among others, of enabling the wearer to tie the wearer’s hair for decorative purposes, gather the wearer’s hair, and provide additional securement of the cap on the wearer’s head. The references cited by the Examiner, however, use either an elastic band or a ribbon/cord, and they use it to fasten the cap to the wearer’s head. There is no suggestion that both a sweatband having an elastomeric section and a first and second ribbon could be included to permit the wearer to decorate or gather the wearer’s hair, as well as secure the hat to the user.

The Applicant, therefore, submits that the Office Action did not show any genuine teaching, motivation, or suggestion to combine the cited references. As such,

the Applicant respectfully submits that the Applicant's teachings themselves have been used to piece together the cited references through hindsight reconstruction. Since this combination of a sweatband having an elastomeric section and a first and second ribbon is present in each of the independent claims 1, 8, and 13, particularly as amended, the Applicant respectfully requests that the rejection of claims 1 – 5, 7 – 10, 12 – 14, and 16 be withdrawn and that the claims be passed to allowance.

The Examiner also rejected claims 6, 11, and 13 as being unpatentable over Friedman, Park, and Goldsmith, and in further view of Beckerman (US 5,615,415). As noted above, since each of the independent claims 1, 8, and 13, particularly as amended, contain the combination of a sweatband including an elastomeric section and a first and second ribbon, the Applicant submits that the Office Action did not show any genuine teaching, motivation, or suggestion to combine the cited references to produce the claimed combination. As such, the Applicant respectfully requests that the rejection of claims 6, 11, and 13 be withdrawn and that the claims be passed to allowance

Claims 1 – 16 remain in this application. No new matter has been added to this application by this response to the Office Action.

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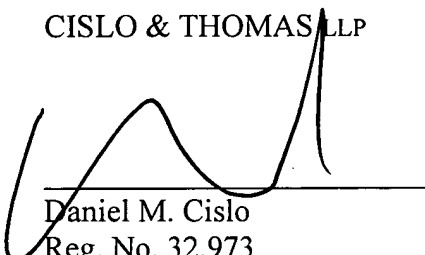
Having responded to each of the Examiner's concerns, Applicant asserts that the application is now in condition for allowance and solicits that action. If a telephone interview will advance the allowance of the application, enable an Examiner's amendment, or promote other meaningful discussion of the case, Applicant requests the Examiner contact Applicant's representative at the number listed below.

It is not believed that any additional fees are due; however, in the event any additional fees are due, the Examiner is authorized to charge Applicant's attorney's deposit account no. 03-2030.

Respectfully submitted,

CISLO & THOMAS LLP

Dated: June 14th, 2006



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Dated: June ⁶14, 2006



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